IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 16231 of 2007(G)

PETITIONERS:

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1. KAMARJAN V.A., WIDOW OF LATE K.K. HANEEFA, AGED 68 YEARS, 'SHEREENA MANZIL, RAYAMANGALAM P.O., PERUMBAVOOR, KUNNATHNAD, ERNAKULAM DISTRICT.

2. K.H.ABDUL SHEBY, S/O LATE K.K.HANEEFA, AGED 36 YEARS, 'SHEREENA MANZIL', RAYAMANGALAM P.O., PERUMBAVOOR, KUNNATHNAD, ERNAKULAM DISTRICT.

3. K.H.SHEREENA, DAUGHTER OF LATE K.K.HANEEFA, AGED 34 YEARS, 'SHEREENA MANZIL', RAYAMANGALAM P.O., PERUMBAVOOR, KUNNATHNAD, ERNAKULAM DISTRICT.

4. K.H.BABU, SON OF LATE HANEEFA, AGED 32 YEARS, 'SHEREENA MANZIL', RAYAMANGALAM P.O., PERUMBAVOOR, KUNNATHNAD, ERNAKULAM DISTRICT.

BY ADV. SRI.M.P.MOHAMMED ASLAM
SRI.P.K.YUSUFF ISSUDDIN

RESPONDENTS:

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1. RAYAMANGALAM GRAMA PANCHAYATH, P.O.RAYAMANGALAM, KURUPPAMPADI VIA., ERNAKULAM DISTRICT. PIN-683545 REPRESENTED BY ITS SECRETARY.

2. SECRETARY, RAYAMANGALAM GRAMA PANCHAYATH, P.O.RAYAMANGALAM, KURUPPAMPADI VIA., ERNAKULAM DISTRICT. PIN-683545

3. DIVISIONAL FOREST OFFICER, KODANAD, OFFICE OF THE DIVISIONAL FOREST OFFICER P.O. KODANAD, ERNAKULAM DIST.

4. THE CENTRAL EMPOWERED COMMITTEE
SUPREME COURT OF INDIA.

ADDL. 4TH RESPONDENT IS IMPLEADED SUO MOTU VIDE JUDGMENT DT. 17.9.07

BY ADV. SRI.N.K.KARNIS
SR. GOVERNMENT PLEADER SRI. RANJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C). NO. 16231 OF 2007

Dated this the 17th day of September, 2007

J U D G M E N T

Petitioners are the legal heirs of one K.K.Haneefa, husband of the 1st petitioner and father of the other petitioners. According to the petitioners, Sri. Haneefa was conducting 5 Match Work Units under the name and style Bulkees Match Works, Shereena match Works, Babu match Factory, Ajantha Match Industries and Aiswarya Splints. According to the petitioners, on account of financial crisis, the Units became defunct and the licences issued by the 1st respondent/Panchayat were got renewed only up to the year 2000-01.

2. The petitioners submit that Sri. Haneefa passed away on 31.3.05. They are without any source of living. Therefore, they are making earnest efforts for reviving the 5 Units. With considerable difficulty they have borrowed amounts from their relatives and well wishers and made investments in the 5 Units with the purpose of reviving them. They submitted applications for renewal of the licences in respect of the 5 Units. Exts. P10 to P14 are applications for renewal of the licences submitted to respondents 1 and 2 (the Panchayat and the Secretary). Petitioners refer to the order of the Hon'ble Supreme Court in T.N.Godavarman Thirumulpad v. Union of India in [Writ Petition (Civil) No.202 of 1995] a

case concerning ecological imbalance, protection and conservation of forest through out the country, protection of wild life, ban on felling of trees etc. They point out that as per the order passed in I.A. No.566 dated 29.10.02 the Supreme Court has directed as follows:

> *"No State or Union Territory shall permit any unlicensed saw-mills, veneer or plywood industries to operate and they are directed to close all such unlicensed units forthwith. No State Government or Union Territory will permit the opening of any saw-mill, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There will also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee."*

Petitioners submit further that on receiving Exts. P10 to P14 applications, the 2nd respondent/Secretary of the Panchayat addressed the 3rd respondent/Divisional Forest Officer, Kodanad, for a clarification whether permission from that office is necessary for renewal of the licences as per Ext.P15 letter. Petitioners point out that in Ext.P15 the 2nd respondent has narrated the circumstances under which the original licences had expired and stated that the Panchayat has no reason to object to the renewal of the licences. To Ext.P15, the 3rd respondent has sent Ext.P16 communication to the 2nd respondent. It is stated in Ext.P16 that the issue was referred to the higher authorities in the Forest Department who are of the view that No Objection Certificate in the matter of issuance of licences by local authorities need be given only in cases where such certificate had been

previously issued by the Forest Department. It is also stated that the Central Empowered Committee constituted by the Supreme Court is to be approached in other cases for No Objection Certificate. Lastly, Under Ext.P16 No Objection Certificate is rejected to the petitioners' Units on the reason that those Units had not been issued previously with any No Objection Certificate. According to the petitioners, the Supreme Court's order is not applicable to applications submitted by the petitioners for renewal of licences. The said order is applicable only to applications for fresh licences. Raising various grounds, petitioners pray in this writ petition under Article 226 that:

(1) Ext.P16 be quashed.

(2) Declare that previous permission or concurrence of the Forest Department or the Central Empowered Committee is not required for renewal of licences applied for by Exts.p10 to P14.

(3) Command 1st and 2nd respondents to renew licences applied for by the petitioners

3. Respondents 1 and 2 have not filed any counter affidavit. But the 3rd respondent, the Divisional Forest Officer, has filed a counter affidavit. It is contended therein that the 5 industries devolved on the petitioners had not obtained No Objection Certificate from the Forest Department at any point of time. The Government has by G.O.(P) No.53/98/Forest dated 16.7.98 ordered that renewal of the licence yearly to

the industries based on forest produce should be subject to the No Objection Certificate issued by the concerned Divisional Forest Officer. Ext.R3(a) is the copy of the above Govt. order. It was obligatory on the part of Sri. Haneefa to obtain No Objection Certificate from the Forest Department for renewal of licences. Having not done so, the licences issued to Sri. Haneefa will not be binding on the Forest Department. It is then pointed out that admittedly the 5 industries became defunct during the year 2001. No steps were taken by Sri. Haneefa for renewal of the licences in terms of the Kerala Panchayat Raj Act and Rules. Renewal of licences is to be sought for during the currency of a valid licence. Since there was no application for renewal of licences for a long period of 5 years after the expiry of the original licences, the applications now put in by the petitioners is to be considered as application for fresh licences. The counter affidavit then refers to the order of the Supreme Court in T.N.Godavarman Thirumulpad's case and submits that the 3rd respondent was justified in issuing Ext.P16.

4. I have heard the submissions of Sri.M.P.M. Aslam, Advocate on behalf of the petitioners and also those of Sri.Ranjith Thampan, Special Government Pleader (Forest) on behalf of the 3rd respondent. On the basis of the grounds raised and the various documents placed on record including Ext.P7 order passed by the Kerala Lok Ayukta, Mr. Aslam submitted that the Supreme Court's order in T.N.Godavarman

Thirumulpad's case cannot have application in cases for renewal of licences. Learned counsel drew my attention to sections 232, 233, 234 and 236 (1) and (11) of the Kerala Panchayat Raj Act. Learned Counsel also drew my attention to Rule 10 of the Kerala Panchayat Raj (Issue of licence to Dangerous and Offensive trades and factories) Rules 1996 (hereinafter referred to as "the D&O Rules"). According to Mr. Aslam, on a correct reading and interpretation of Section 236 (11) and the Rule, it will have to be seen that no time limit is fixed for filing applications for renewal of licences.

5. Sri. Ranjith Thampan, Spl. Govt. Pleader for forest, was able to meet the submissions of Mr. Aslam. He would submit that the very idea of renewal presupposes the existence of a current licence.

6. It is difficult to accept the argument of Sri. Aslam that Exts. P10 to p14 are applications for renewal of licences. True, 'year' has been denied under Clause XLVIII of Section 2 as financial year. Rule 10 of the D&O Rules is as follows:

> "Period for submitting application for renewal of licence and that for submitting fresh application for licence - An application for renewal of licence shall be submitted thirty days before the end of an year and an application for licence for fresh openings shall be submitted thirty days before the openings thereof."

Section 236 (11) of the Kerala Panchayat Raj Act provides as follows:

> "When any licence or permission is suspended or revoked or when the period for which it was granted, or within which

application for renewal should be made, has expired, whichever expires later, the grantee shall for all purposes of this Act or any rule made under it be deemed to be without a licence or permission until the order suspending or revoking the licence or permission is cancelled or, subject to sub-sections (3) and (4), until the licence or permission is renewed, as the case may be."

Sub-sections (3) and (4) of Section 236 will also be quoted now.

Sub-section (3):

"Save as aforesaid, if orders on an application for any such licence or permission are not communicated to the applicant within thirty days or such longer period as may be prescribed in any class of cases after the receipt of the application by the Secretary, the application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed and subject to the law, rules and bye-laws and all conditions ordinarily imposed."

Sub-section (4):

"The acceptance of the pre-payment of the fee for any such licence or permission shall not entitle the person making such pre-payment to the licence or permission but only to a refund of the fee in case of refusal of the licence or permission."

7. It is not in dispute that for conduct of the Match Units a licence is absolutely necessary in terms of Section 232 (1) and continuance of the unit without a licence is penal in terms of Section 257 of the Kerala Panchayat Raj Act. It is not disputed that the last of the licences which had been issued by the Panchayat in respect of the 5 Match Units expired by 31.3.01 and that thereafter the Match Units were not functioning. The argument that an application for renewal of licence can be submitted under

Rule 10 of the D&O Rules thirty days before the end of any financial year even it be years after the expiry of the granted licence is neither sound nor reasonable. Accepting that argument will be to defeat the very purpose of Section 232 which mandates that certain scheduled activities shall not be carried on other than on the strength of a current valid licence. A conjoint reading of Section 236 (1) and (11) with rule 10 of the D&O Rules will lead to the irresistible conclusion that application for renewal will have to be made not less that thirty days and not more than ninety days before the expiry of the validity of the licence in respect of which renewal is sought for. Application for renewal thus necessarily has to be with respect to an existing licence and not with respect to a licence which had became invalid due to expiry of the period mentioned therein years ago, as in the present case. The words “end of an year” appearing in rule 10 of the D&O rules refer to the end of the financial year during which an existing licence expires and not any financial year. Thus the stand of the 3rd respondent that Exts. P10 to P14 ought to be treated as fresh licences applications i.e. applications for licence for fresh openings is correct.

I therefore repel the arguments of Mr. Aslam and decline the prayers made in the writ petition. However, I dispose of the writ petition directing the petitioners to approach the additional 3rd respondent/ Central Empowered Committee constituted by the Supreme Court pursuant to the order in T.N.Godavarman Thirumulpad v. Union of India (Cont. Petition

(Civil) No. 301/03 and Wit Petition (Civil) No.202 of 1995 by filing appropriate applications. The additional 3rd respondent will pass early orders on the application bestowing sympathy on the same, considering the situation that the petitioners are, the widow and children of somebody who was having a valid licence and used to conduct the unit without any room for complaint from any quarter presently in dire straits financially and the stand of the local authority that for all practical purposes the application can be construed as one for renewal of an expired licence. Orders will be passed by the additional 3rd respondent within one month of their receiving application from the petitioners.

The writ petition is disposed of as above and the parties will bear their respective costs in the circumstances of the case.

PIUS C. KURIAKOSE, JUDGE

vps

K.R. UDAYABHANU, JUDGE

CRL.A. NOS.721/99 & 213/02

JUDGMENT

13TH SEPTEMBER, 2007

CRL.R.P.769/00

ORDER IN CRL.M.P. NO.4143/00 IN CRL.R.P.769/00

DISMISSED

13.9.07 SD/- **K.R. UDAYABHANU, JUDGE**

/TRUE COPY/

PA TO JUDGE.